

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOE FLORES, an individual; and
CONNIE FLORES, an individual,

Plaintiffs,

v.

EMERICH & FIKE, a professional
corporation, et al.

Defendants.

1:05-CV-0291 OWW DLB

ORDER RE: REQUEST FOR
RECONSIDERATION OF MINUTE
ORDER VACATING HEARING ON
DEFENDANTS' MOTION FOR
ATTORNEY'S FEES AND

RE-SETTING HEARING ON
ATTORNEY'S FEES MOTION

The district court granted Defendants' motion to dismiss and/or to strike all of Plaintiffs' claims pursuant to California's Anti-SLAPP statute, Cal. Code Civ. Pro. § 425.16. (Docs. 108, 134.) Plaintiffs filed a notice of appeal on October 10, 2006. A judgment of dismissal was entered on October 12, 2006.

On October 13, 2006, Defendants moved for attorneys fees and costs pursuant to California's Anti-SLAPP statute, which makes attorneys fees and costs available to a "prevailing defendant on a special motion to strike." Cal. Code Civ. Pro. § 425.16(c). On November 13, 2006, the district court issued the following minute order, taking the motion for attorneys fees off calendar:

MINUTE ORDER: TEXT ONLY ENTRY - As a Notice of Appeal has been filed, the court no longer has jurisdiction over this case and the hearing set for 11/20/2006 is vacated. (Lucas, G) (Entered: 11/13/2006)

1 (Doc. 150.) On November 17, 2006, Defendants moved for
2 reconsideration of this minute order.

3 Defendants correctly argue that the district court does have
4 jurisdiction to proceed with Defendants' motion for attorneys
5 fees notwithstanding the pendency of Plaintiffs' appeal.
6 *Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955, 957 (9th Cir.
7 1983) (district court did not act beyond its jurisdiction by
8 hearing and deciding motion for attorneys fees after filing of
9 notice of appeal; this practice "prevent[s] postponement of fee
10 consideration until after the circuit court mandate, when the
11 relevant circumstances will no longer be fresh in the mind of the
12 district judge"). The issuance of the November 13, 2006 minute
13 order was an administrative error. Defendants' motion for
14 reconsideration is **GRANTED**. The motion for attorneys fees is
15 reinstated and will be heard on February 26, 2007, at 10:00 a.m.
16 in Courtroom 3.

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20 IT IS SO ORDERED.

21 **Dated: November 27, 2006**
22 **b2e55c**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE